**HIGH COURT OF UTTARANCHAL AT NAINITAL**

[Chapter VIII Rule 32(2)(b)]

**Special Appeal No. 73 of 2004**
**And**
**Special Appeal No. 74 of 2004**

Dated of Decision: 04 January 2006

Approved for reporting
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Not approved for reporting

Initial of Judge

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**(1) Special Appeal No. 73 of 2004**

1. Manoj Srivastava S/o Shri K.K.P. Srivastava,
   R/o House No. G-77, Shivalik Nagar, BHEL, Haridwar.
2. Dinesh Singh S/o Shri Maya Ram Singh,
   C/o Shri Vikram Singh Karki,
   Panchasthani, Chunawalaya,
   Roshnabad, Haridwar.
3. Deepak Verma S/o Shri Suresh Chandra Verma,
   Sector-I, Type – II, BHEL, Haridwar.
4. Sudhir Kumar S/o Shri Ruhla Singh,
   R/o House No. 369, Type – II, Sector –III,
   BHEL, Hridwar.
5. Pradeep Kumar S/o Shri Jagpal Singh,
   R/o Village Jaitpur, Tehsil & Post Laksar,
   District Haridwar.
6. Gopal Datt Tiwari S/o Shri Govind Ram Tiwari,
   R/o Shri Ram Shiv Mandir, Ramesh Rani Bhawan,
   Degree College Road, Govindpuri,
   Haridwar.
7. Smt. Suvidha Rani W/o Shri Ved Prakash,
   R/o 10 - A, Inder Road, Dalanwala,
   Dehradun.
8. Ajay Pal Singh S/o Shri Charan Singh,
   R/o House No. 5, Type II, Sector V (A),
   BHEL, Haridwar.
9. Baldev Singh S/o Shri Shobha Ram,
   R/o Bhahadarabad,
   District Haridwar.
10. Vijendra Singh S/o Shri Sangat Singh,
    C/o Shri Ram Singh, House No. 14,
    Gali No. 1, Tivri,
    BHEL, Haridwar.
11. Bhagat Singh S/o Shri Surat Singh,
    R/o House No. 160-II,
    Vasant Vihar, Dehradun,
    Uttaranchal.
12. Mahipal Singh S/o Shri Hos Ram,
    R/o Village Basuwakheri, Post Manglore,
    District Haridwar.
13. Manoj Kumar S/o Shri Raj Kishore,
    R/o Quarter No. 11/07, Prem Baba Colony,
    Ganeshpur, Roorkee,
    District Haridwar. - Appellants/Petitioners

Vs.

District Judge, Haridwar - Respondent

Mr. S. Dhulia, Senior Advocate a/b Mr. I.D. Paliwal, Advocate for appellants.
Mr. Sharad Sharma, Standing Counsel for respondent.

And

**(2) Special Appeal No. 74 of 2004**

1. Kamlesh Kumar S/o Shri Ram Naresh,
   C/o Shri R.G. Srivastava,
   House No. 242, Type I,
   Sector I, BHEL,
   District Haridwar.
2. Naresh Kumar Kashyap S/o Shri Nakli Ram Kashyap,
   R/o Tulsi Chowk, Mayapur,
   Quarter No. D-57,
   District Haridwar,
   Uttaranchal. - Appellants/petitioners

Vs.

District Judge, Haridwar - Respondent

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Mr. S. Dhulia, Senior Advocate, a/b Mr. I.D. Paliwal, Advocate for the appellants.
Mr. Sharad Sharma, Standing Counsel for respondent.

**COMMON JUDGMENT**

**Coram : Hon'ble Cyriac Joseph, C.J.**
**Hon'ble Rajesh Tandon, J.**

**Cyriac Joseph, C.J.**

1. Since common questions arise in these two special appeals they were heard together and they are being disposed of through a common judgment.

2. Special Appeal No. 73 of 2004 is filed against the judgment dated 6.10.04 in Civil Writ Petition No. 1142 (S/S) of 2004 which was dismissed in limine by the learned Single Judge. The appellants are the thirteen petitioners in the writ petition.

3. Special Appeal No. 74 (S/S) of 2004 is filed against the judgment dated 6.10.04 in Civil Writ Petition No. 1141 (S/S) of 2004 which was dismissed in limine by the learned Single Judge. The appellants are the two petitioners in the writ petition.

4. According to the averments in the above mentioned two writ petitions, the District Judge, Haridwar issued an advertisement in the month of April, 2003 inviting applications from eligible candidates for appointment to ten Class IV posts and two posts of Driver in the District Court Haridwar. The petitioners applied for appointment to the Class IV posts. They were called for interview and they were interviewed by a committee constituted for the purpose. A list of thirty four selected candidates was prepared. The names of the petitioners in Writ Petition No. 1142 (S/S) of 2004 were included in the said list at SI. Nos. 17,20, 22,24,25,26,27,28,29,30,31,32 and 33 . The names of the petitioners in Writ Petition No. 1141 (S/S) of 2004 were included in the said list at SI. Nos. 18 and 19. All the petitioners were given appointment letters dated 16.3.2004 and they joined duty on 17th or 18th March, 2004. Though the petitioners were discharging their duties satisfactorily their services were terminated by the District Judge, Haridwar on 25.9.04 through identically worded communications which read as follows:-

> "Your services are no more required in the Judgeship. Hence you are hereby ceased to act as employee of this Judgeship with immediate effect."

5. The petitioners filed the writ petitions challenging the orders of termination and praying to quash the said orders. However the writ petitions were dismissed in limine by the learned Single Judge through separate judgments but citing identical reasons. According to the learned Single Judge, since the petitioners were appointed as Class IV employees only on temporary basis and with a specific condition that their appointment could be terminated at any time without assigning any reason and since the services of the petitioner were terminated through a "simpliciter order without casting any stigma on the petitioners" and since the ground of such termination was that their services were no more required, the impugned orders were not vitiated by any illegality. The learned Single Judge also pointed out that applications were invited only for ten Class IV posts whereas thirty four persons were appointed as against the said ten posts. According to the learned Single Judge the District Judge was

compelled to terminate the services of the petitioners as they were appointed in excess of the sanctioned strength.

6. The petitioners in Writ Petition No. 1142 (S/S) of 2004 filed Review Petition No. 5909 of 2004 seeking review of the judgment in the writ petition but the review petition was rejected on 13.10.04 The petitioners in Writ Petition No. 1141 (S/S) of 2004 also sought review of the judgment in the writ petition by filing Review Petition No. 5908 of 2004 but the said review petition also was rejected by the learned Single Judge on 13.10.04. Thereupon the petitioners filed these special appeals praying for setting aside the judgments in the writ petitions and the orders passed in the review petitions.

7. Since the writ petitions were dismissed in limine the respondent District Judge, Haridwar was given an opportunity to file a counter affidavit in the special appeal explaining the reasons for termination of the services of the appellants. Accordingly the District Judge, Haridwar filed a counter affidavit dated 22.7.05 in Special appeal No.74 of 2004. The learned counsel for the respondent submitted that the contentions in the said counter affidavit could be treated as the respondent's contentions in Special Appeal No. 73 of 2004 also. In reply to the averments in the counter affidavit the appellants in Special Appeal No. 74 of 2004 filed a rejoinder affidavit dated 7.8.04

8. We have considered the averments contained in the writ petitions, special appeals, counter affidavit and rejoinder affidavit and also the submissions made by the learned counsel for the parties.

9. According to the averments in the counter affidavit filed by the District Judge, Haridwar, advertisement was issued for recruitment of ten Class IV employees and two Drivers on temporary basis. As per the advertisement, there could be increase or decrease of the vacancies depending on the sanctioned cadre strength and the need of the Judgeship. The sanctions strength of Class IV employees including Drivers and Chaukidars is eighty two (including the four posts created in the Family Court, Haridwar as per Government order dated

15.4.04). Before the selection and appointment of the petitioners (Appellants), fifty seven persons were already working. From the list of selected candidates SI. Nos. 1 to 10 were appointed against the ten posts advertised. SI Nos. 11 to 14 were appointed against the four posts in the Family Court, Haridwar. SI. Nos. 15 and 16 were appointed against the two posts available on 29.8.03. One Mr. Sripriya Ravindar Panwar was appointed on 8.9.03 under the Dying-in-Harness Scheme. Three Drivers (including on pool car Driver) also were appointed. Five posts of Class IV employees were filled up by making appointment in compliance with the directions contained in the judgment dated 2.7.03 in Writ Petition No.62 (S/S) of 2003 and Writ Petition No.115 (S/S) of 2003. Thus, all the eighty two sanctioned posts of Class IV employees stood filled up. But thereafter, owing to a wrong interpretation of Rule-3 of the Subordinate Court (Inferior Establishment) Rules, the petitioners (appellants herein) also were given appointment on 16.3.04 even though sanctioned posts were not available for such appointments. The above mistake was later detected by the successor District Judge and for rectification of the said mistake, the services of persons appointed in excess of the sanctioned strength were terminated on 25.9.04 As sanctioned posts were not available the order of termination simply stated that their services were no more required in the Judgeship.

10. Though the appellants have filed a rejoinder affidavit they have not made any averment or placed on record any material to establish that the factual position stated in the counter affidavit is wrong.

11. It is not disputed that in the advertisement inviting applications only ten posts of Class IV employees were mentioned. It is also not disputed that sixteen persons included in the select list (SI. Nos. 1 to 16) were appointed as Class IV employees and that they are allowed to continue in service. Only the services of those included below SI. No. 16 were terminated for want of sanctioned posts. The appellants have no case that any person who obtained rank below them has been retained in service while terminating their services. They also could not establish that in addition to the eighty two sanctioned posts which

remain filled up, there are other posts available to accommodate them. It cannot be disputed that the District Judge, Haridwar could appoint Class IV employees only against the sanctioned number of posts and that he was not competent to appoint persons in excess of the sanctioned strength. Even if any person was wrongly appointed without any sanctioned post being available, the mistake required to be corrected by canceling such illegal appointment. Therefore, the respondent was right and justified in terminating the services of the appellants who were illegally appointed without sanctioned posts. Hence the appellants cannot have any legitimate grievance against the termination of their services.

12. Admittedly, the appointment of the appellants as Class IV employees was only on temporary basis. The appointment orders specifically stated that the appointment was on temporary basis and that it could be terminated at any time without assigning any reason. Since the appointments of the petitioners were illegal and without sanctioned posts being available and since the services were terminated for correcting the mistake of making illegal appointment. no show cause notice or personal hearing was required before terminating their services, as their appointments were purely temporary and were liable to be terminated at any time without assigning any reason. As rightly pointed out by the learned Single Judge, the services of the appellants were terminated thought a simpliciter order of termination without casting any stigma on the petitioners. The reason stated for terminating the services was that their services were no more required. The respondent was justified in assigning the said reason because the services of only eighty two Class IV employees were required in the Judgeship of Haridwar and eighty two Class IV employees had been in service even before the appellants were appointed. While terminating the services of the excess persons, any person who was ranked below the appellants in the select list has not been retained in service. In the above circumstances, it cannot be said that by terminating the services of the appellants the respondent followed the policy of “hire and fire”. Nor can it be said that the termination of the services of the appellants was

illegal or arbitrary or violative of the principles of natural justice. In our view there is also no violation of the provisions of Article 311 of the Constitution of India in these cases.

13. For the reasons stated above, we hold that the termination of services of the writ petitioners was not vitiated by any illegality and that the orders impugned in the writ petitions were not liable to be quashed. Hence we hold that the writ petitions were liable to be dismissed by the learned Single Judge and the there is no merit in these special appeals. Therefore, the special appeals are dismissed.

**(Rajesh Tandon, J.)** **(Cyriac Joseph, C. J.),**

January 04, 2006

JPT